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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: November 23, 2022	)	Case No.: PSH-23-0029
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Issued: April 6, 2023

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position which requires that she hold a security clearance. In May 2022, the Individual was arrested and charged with Driving While Intoxicated, which she reported to her security officer as required. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of four witnesses and testified on her own behalf. The LSO presented the testimony of the DOE Contractor Psychologist (Psychologist) who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E.

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<sup>1</sup> Under the regulations, “[a]ccess authorization’ means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guidelines G and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. 710.7.

Guideline G states that excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

...

- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

- (e) The failure to follow treatment advice once diagnosed;

- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

*Id.* at ¶ 22 (a), (c)–(g).

Guideline J states that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and that, by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶30. Conditions that could raise a security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

....

*Id.* at ¶ 31 (a)–(b).

In the Notification Letter, the LSO alleges that:

- A. In May 2022, the Individual was arrested and charged with Driving While Intoxicated and admitted to consuming eight beers prior to her arrest;
- B. In April 2014, the Individual was arrested charged with Aggravated Driving Under the Influence<sup>2</sup>, registered Blood Alcohol contents (BAC) of 0.21% and 0.19%, and admitted to drinking whiskey before her arrest; and
- C. In August 2022, the Psychologist examined the Individual and opined that she frequently and habitually consumed alcohol to intoxication.

Ex. 1 at 1–2. Accordingly, given the above allegations, the LSO’s security concerns under Guidelines G and J are justified.

### III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> In this opinion, the acronym DUI will be used for both the Driving Under the Influence and Driving While Intoxicated charges.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### IV. FINDINGS OF FACT

On the evening of her May 2022 DUI, the Individual went to dinner with her sister around 6:00 p.m. and consumed two beers with dinner. Ex. 1 at 1; Ex. 5 at 1. At her sister's apartment after dinner, the Individual consumed a six-pack of beer then left around 1:00 a.m. Ex. 3 at 1. She was subsequently pulled over for swerving into another lane and was arrested and charged with Driving While Intoxicated. *Id.*

The Individual was referred to the Psychologist, who conducted an evaluation of her in early August 2022 and released a Psychological Assessment Report later that month. Ex. 9. The Psychologist reported that the Individual had abstained from alcohol for five or six months after her 2014 DUI, but eventually resumed drinking. *Id.* at 3. Her regular pattern of consumption was to drink alcohol about three times per week and to drink to intoxication about three times per month. *Id.* When she was hired by the DOE Contractor, she reduced her alcohol use to two days per week and became intoxicated twice per month. *Id.* The Individual told the Psychologist that after the May 2022 DUI, she consumed alcohol at her sister's wedding in June and on her birthday in July. *Id.* The Psychologist ordered a Phosphatidylethanol laboratory test (PEth test) for the Individual, a blood test that indicates whether the subject has consumed alcohol within the preceding three to four weeks. *Id.* at 5. The Individual's result was positive, though, at 23 ng/mL, the result was only slightly above the detection cutoff of 20 ng/mL. *Id.* The Psychologist opined that the Individual frequently consumed alcohol in amounts that have been found to impair judgment and that the Individual habitually consumed over three times the amount of alcohol considered "risky" or "heavy" consumption by the National Institute on Alcohol Abuse and Alcoholism. *Id.* at 6. The Psychologist recommended that the Individual attend an Intensive Outpatient Program (IOP) for substance abuse for two months and aftercare provided by the IOP for an additional six months after that. *Id.* She also recommended that the Individual remain abstinent from alcohol during that time and undergo monthly PEth testing to support her claims of abstinence. *Id.* Four days after undergoing the PEth test ordered by the Psychologist, the Individual underwent another PEth test at her own expense; the test yielded a negative result. Ex. B at 1.<sup>3</sup>

At the hearing, the Individual testified on her own behalf and presented the testimony of her sister, two friends, and her counsellor. The agency presented the testimony of the Psychologist.

The Individual's first friend to testify had known the Individual for 12 years. Tr. at 14. She lived in another state but would visit the Individual about every other month and stay for most of a weekend. *Id.* She had seen the Individual set and achieve goals for her life over the preceding nine months, including beginning the process of getting her pilot's license and buying a home. *Id.* at 15. She testified that the Individual no longer consumed alcohol and appeared happy with that choice.

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<sup>3</sup> There was no interpretation of the PEth results by a qualified medical professional analyzing the results of the test. Moreover, the Individual's birthday (on which date she admitted to consuming alcohol) was less than 30 days prior to the first PEth test's administration and thus could have produced the marginally positive test result. The Individual's subsequent PEth result four days later was negative. Therefore, I find that the evidence supports the Individual's reports of abstinence between her birthday and her psychological assessment.

*Id.* at 16. She further testified that the Individual had maintained and improved her friendships since abstaining from alcohol and that those friends were supportive of the Individual's sobriety. *Id.* at 17.

The Individual's other friend testified that she saw the Individual two to three days per week. Tr. at 46–47. She testified that the Individual told her about the DUI and told her that she was disappointed in herself. *Id.* She testified that the Individual committed to not drinking and driving anymore and, later, committed to abstaining from alcohol. *Id.* at 47. This friend had been with the Individual on her birthday and testified that during the celebration, the Individual commented multiple times that it was her last time drinking. *Id.* at 49–50. She testified that the Individual did not “overconsume” alcohol on that day and did not drive. *Id.* at 58.

The Individual's sister testified that the Individual was embarrassed after her May 2022 DUI and began taking her alcohol issues seriously. Tr. at 24–25. She further testified that the Individual realized that alcohol was affecting her life and her job. *Id.* at 25. She and the Individual discussed the Individual's IOP classes every night as the Individual returned home from class. *Id.* at 26. She testified that the Individual was very positive about attending the IOP and got something out of every class. *Id.* at 26–27. She had heard the Individual discuss what she had learned from the stories of her classmates. *Id.* She testified that the Individual had become more patient and has learned skills to manage stress and anxiety appropriately, especially where her perfectionism was concerned. *Id.* at 28–29. She last saw the Individual consume alcohol in late spring 2022. *Id.* at 34–35.

The Individual took responsibility for her actions that resulted in the administrative review process. Tr. at 62. She testified that her last drink was on her birthday and that she had consumed two or three beers on that occasion and a total of about four beers over the preceding two days. *Id.* at 99, 102–03. She testified that she had completed an eight-week IOP and began attending aftercare once a week. *Id.* at 63, 66; Ex. A. Later, the Individual's counselor suggested that she attend aftercare twice per week in addition to her individual counseling sessions, and the Individual complied with the counselor's suggestion. Tr. at 63. As of the hearing date, she was still attending aftercare twice per week. *Id.* at 72–73. She submitted into evidence the results of seven PEth tests administered to her every four weeks between September 2022 and February 2023, all of which were negative and supported the Individual's claim of abstinence. Ex. B at 2–8.

The Individual testified that she entered the IOP in a somewhat standoffish mood because she was uncomfortable talking about her feelings but was determined to learn something from the classes because she was “spending [her] time and [her] money on this.” Tr. at 67, 73. As she became more accustomed to the IOP, she began to open up and made significant progress in her early alcohol recovery and learned more about herself and her relationships as well. *Id.* She had been particularly interested in discussions about alcohol's effects on the body, the decision-making process, and the root cause of her alcohol consumption. *Id.* at 68. The Individual realized that she had used alcohol to cope with situations in which she felt vulnerable, uneasy, or unconfident. *Id.* at 68–69. She learned that alcohol made those situations worse and, as of the hearing, was confident in her ability to handle any situation without alcohol. *Id.* at 69. She felt “so much stronger because you're firing on all cylinders, not having alcohol damper [sic] or slow you down.” *Id.*

The Individual testified that the aftercare program increased her accountability and that she enjoyed the relationships she had formed with her classmates. Tr. at 72–73. She and her classmates often checked in with each other outside of class and had become a support group for each other. *Id.* at 73. She testified that attending two sessions was helpful because one of the classes focused on relationships with others and the other class focused on self-improvement. *Id.* at 72. The Individual also attended individual counseling sessions. *Id.* at 76. She liked that she could go into deeper detail about family and relationship issues. *Id.* She had worked with her counselor to avoid taking on the feelings of those around her and to let go of situations over which she had no control, a practice which she described as “liberating.” *Id.* at 77. She had also learned to pause and evaluate situations before acting. *Id.* at 89–90.

Because the Individual had always continued accomplishing things in her personal life, she had never realized that alcohol was holding her back. *Id.* at 75. However, after attending the IOP, aftercare, and individual counseling, she was very clear in her belief that alcohol had negatively impacted her life and that she had an alcohol problem. *Id.* at 75, 77, 88. She saw her treatment as a positive part of her life and intended to continue attending aftercare and counseling. *Id.* at 77. She testified that she had seen immense benefits in her life after abstaining from alcohol and she planned to continue abstaining indefinitely. *Id.* at 79, 88.

The Individual was in a deferred adjudication program for her 2022 DUI charge, which depended on her successful completion of one year of probation and court ordered classes. *Id.* at 85. She had completed one of the classes by the hearing date and was registered for the other within the next several weeks. *Id.* Because she had presented the court with her negative PEth tests, she was not required to install an interlock device in her car. *Id.* at 86. The Individual understood the agency’s concern that she had been arrested for drinking and driving twice. *Id.* at 80. She was disturbed by the notion that she was a “two-time criminal.” *Id.* She stated that she took responsibility for her arrests and testified that it was not in her character to break the law. *Id.* She testified that abstaining from alcohol would prevent her from further troubles with the law because her only arrests were alcohol related. *Id.* at 81, 89.

The Individual’s counselor testified that she worked at the IOP and had evaluated the Individual for her intake into the IOP program. Tr. at 108. The counselor stated that the IOP involved “relapse prevention, relapse education, early stages of recovery, kind of what to expect, what the process of change can be for various different things, whether they’re wanting to change behaviors or substance abuse.” *Id.* at 108–09. She stated that the IOP also focused on emotions, stress tolerance, communication skills, and relationship issues. *Id.* at 109. She testified that the Individual asked questions to gain insight and learn about others’ perspectives. *Id.* at 111. She described the Individual as willing to grow and willing to receive feedback. *Id.* at 111–12. She testified that the Individual was invested in her recovery from the beginning of the IOP. *Id.* at 112. She testified that the Individual had learned how to face triggering situations without alcohol and that the Individual had successfully demonstrated her ability to use those skills in real world situations. *Id.* at 112, 114–15. She also testified that the Individual had always had appropriate participation in the IOP and aftercare and that she often called on the Individual to share her experience with new participants. *Id.* at 115–16. The counselor believed that the Individual had internalized what she had learned at the IOP and was invested in her own recovery. *Id.* at 122–23. She also believed that the Individual had the tools to remain abstinent. *Id.* at 126. In light of these positive factors, she opined that the Individual’s prognosis was good. *Id.* at 131.

The Psychologist testified that the Individual was rehabilitated and reformed as of the hearing date. Tr. at 136. She believed the Individual had benefitted from her treatment activities and was encouraged by the Individual's repeated statements that she intended to remain abstinent. *Id.* at 140. She also believed the Individual had internalized the lessons she learned in treatment and had made real changes in her behavior and patterns of thinking. *Id.* at 148–49. The Psychologist determined that the Individual now had good judgment. *Id.* at 150. She gave the Individual a good prognosis. *Id.* at 149.

## **V. ANALYSIS**

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

### **A. Guideline G**

Conditions that can mitigate Guideline G concerns include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or

(d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

Conditions (b) and (d) are applicable in this case. The Individual clearly acknowledges that her alcohol consumption was problematic, and that future alcohol consumption would be detrimental to her life. She has completed an IOP program and had significant participation in aftercare. In fact, she is doing more sessions per week than the Psychologist initially recommended. She is also participating in individual counseling, which the Psychologist did not recommend, and focusing on the root cause of her alcohol consumption. These treatment activities are evidence of actions taken to overcome the Individual's alcohol issues and demonstrate that she has successfully completed a treatment program, and, in light of her bi-weekly attendance, I find that the Individual has substantially completed the required aftercare program recommended by the Psychologist. Furthermore, the Individual has provided medical evidence that she has remained abstinent in accordance with treatment recommendations and has committed to remaining abstinent indefinitely. Taken together, this demonstrates that the Individual has an established pattern of abstinence that goes beyond the Psychologist's original treatment recommendations. Because the Individual's actions have satisfied conditions (b) and (d), I find that the Guideline G concerns have been mitigated.

## **B. Guideline J**

Conditions that can mitigate Guideline J concerns include:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

The Individual's criminal conduct is inextricably linked to her alcohol consumption. There is no evidence that she has been arrested for anything other than drinking and driving. I find that the Individual has satisfied condition (d) because her rehabilitation from her alcohol issues also rehabilitates her from her sequence of alcohol-related criminal charges. The Individual has demonstrated stability, good judgment, a history of following laws (apart from the alcohol-related crimes), a positive view of her future, and a desire to be a law-abiding citizen, all of which make it



unlikely that she will commit new crimes in the future. Accordingly, I find that the Individual has mitigated the Guideline J concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines G and J of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals